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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,802	11/09/2001	Michael J. Seguin	5592.8	7862

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KIRTON AND MCCONKIE
1800 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
P O BOX 45120
SALT LAKE CITY, UT 84145-0120

EXAMINER

ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/987,802

Applicant(s)

SEGUIN, MICHAEL J.

Examiner

James H Zurita

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2001.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claims 19-20 are objected to because of the following informalities:

Claims 19-20 use the word "means." This appears to be an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 17 is directed to determining whether the purchasing order is authorized. The disclosures refer to determining whether a user is authorized to access a portal.

There is no description of how a portal would determine whether a purchase order is authorized.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

Claims 1 and 13 refer to a network. The term "network" could also include sending the items through the US Postal network, using a courier service such as UPS to deliver the items through its network of carriers, etc.. Therefore, the claims are directed towards non-statutory subject matter. To overcome this rejection the Examiner

recommends that Applicant amend the claims to better clarify which of the steps are being performed within the technological arts, such as incorporating a computer network or electronic network into the communicating steps; for example: "(a) communicating over a computer network a plurality of items...". The other claims could be similarly amended to include a computer network.

Claims 13-18 are directed to a method and its steps. Some of the claims (15, 16, 17, 18) recite no technology at all.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shkedy (US 6,260,024).

As per claims 1, 13 and 19, Shkedy discloses systems, networks, methods and computer-executable code for procurement of multiple products offered for sale by a variety of vendors, including:

providing a gateway that includes a customizable selection of products offered for sale by a variety of vendors. See, for example, at least Fig. 1 and related text. See also references to Internet and gateways, at least Col. 8, line 55-Col. 92, line 2.

receiving a purchase order for products provided in the gateway that are to be purchased by a customer. See at least references to purchase orders, for example, Col. 2, lines 41-54.

distributing the purchase order to one or more vendors. See, for example, at least references to presenting purchase orders to several sellers, at least Col. 3, lines 1-5, Col. 4, lines 48-59.

monitoring information relating to purchasing of the products. See, for example, at least 14, line 53-15, line 42. See also at least references to audit database, Fig. 3 and related text.

tracking the purchases made of products from the gateway by the customer. See, for example, references to purchase confirmation database, at least Fig. 2 and related text.

As per claims 1, 13 and 19, Shkedy does not use the term commerce portal. Shkedy refers to gateways and Internet. A portal is a web site that serves as a gateway to the Internet; a portal is a collection of links, content and services designed to guide users to information they are likely to find interesting.¹ Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Shkedy and knowledge generally available to disclose a commerce portal to provide procurement of products from vendors. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Shkedy and knowledge generally available to disclose a commerce portal to provide procurement of products

¹ Definition of *portal*, MICROSOFT Computer Encyclopedia.

from vendors for the obvious reason that by doing so, buyers may, through the principles of supply and demand, can command better leverage in negotiating better prices.

As per claim 2, Shkedy discloses that *nodes* is at least one of: (i) the *server*, and (ii) the *client*. See, for example, at least Col. 8, line 55-Col. 9, line 2.

As per claims 3 and 16, Shkedy discloses that products offered for sale are medical products. See, for example, at least Col. 27, lines 8-24.

As per claim 5, Shkedy discloses that a first product, of the products offered for sale, is from a first industry, and wherein a second product, of the products offered for sale is from a second industry. See, for example, at least Col. 13, lines 18-52.

As per claim 6, Shkedy discloses that a first computer device is a server. See, for example, at least Fig. 1 and related text.

As per claim 7, Shkedy discloses that a second computer device is a client. See, for example, at least Fig. 1 and related text.

As per claim 8, Shkedy discloses that the network is the Internet. See, for example, at least Col. 1, line 14-Col. 2, line 9. see also at least Col. 2, lines 59-67.

As per claim 9, Shkedy discloses that products represented by the *PO* are purchased electronically through the gateway. See, for example, at least Col. 1, line2, lines 42-52.

As per claim 10, Shkedy discloses that the *server* is configured to selectively authorize access to the gateway. See, for example, at least Col. 4, line 60-Col. 5, line 20.

As per claim 11, Shkedy discloses that additional nodes (applicant's third computer) may analyze information obtained by tracking the purchasing of products from the gateway by the customer. See, for example, at least references to various nodes on the Internet and tracking, Col. 5, line 61-Col. 6, line 17.

As per claims 12 and 18, Shkedy discloses that additional nodes (applicant's third computer) may configured to provide a report that includes information obtained by tracking the purchasing of products from the gateway by the customer, wherein the report is provided to at least one of: (i) the customer; and (ii) a vendor. See, for example, at least Col. 4, line 48-59, concerning analysis by potential sellers.

As per claim 14, Shkedy discloses that providing a **portal** may be performed by one or more servers. See, for example, at least references to distributed environment, Col. 11, lines 42-63.

As per claim 15, Shkedy discloses that products offered for sale include products from a variety of different industries. See, for example, at least Col. 13, lines 18-52.

As per claim 17, Shkedy does not specifically disclose determining whether the purchasing order is authorized. See, for example, at least Col. 7, lines 43-47.

As per claim 20, Shkedy discloses executable code for implementing at least one of the steps for: (i) authorizing the **PO** relating to the **portal**; and (ii) providing a purchase analysis. See, for example, at least Col. 4, line 48-59, concerning analysis by potential sellers.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shkedy (US 6,260,024) in view of DeBusk (US 5,991,728).

As per claim 4, Shkedy ***does not*** specifically disclose that medical products relate to performing a dialysis procedure. DeBusk discloses tracking supplies in health care environments and specifically refers to dialysis machines. See, for example, at least Col. 12, lines 28-52. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Shkedy and DeBusk to disclose commerce portals for medical products relating to dialysis procedures. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Shkedy and DeBusk to disclose commerce portals for medical products relating to dialysis procedures for the obvious reason that by including various types of machines, it is possible for buyers and sellers alike to determine if usage estimates for specific procedures are accurate and allow for more informed decisions concerning new equipment purchases.

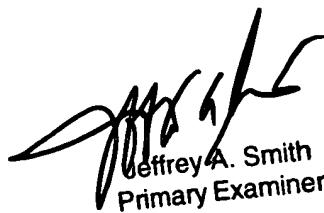
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 703-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J2
James Zurita
Patent Examiner
Art Unit 3625
24 August 2004


Jeffrey A. Smith
Primary Examiner